

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

CITY OF GREENVILLE,)
ILLINOIS et. al...,)
Individually and on)
behalf of all others)
similarly situated,) No: 10-188-JPG-PMF
)
Plaintiffs,)
)
vs.)
)
SYNGENTA CROP)
PROTECTION, INC., and)
SYNGENTA AG,)
)
Defendants.)

DISCOVERY DISPUTE CONFERENCE
BEFORE THE HONORABLE PHILIP M. FRAZIER

A conference call on the discovery dispute of the above mentioned cause was held on September 16, 2010 at 10:30 a.m. at the Benton Federal Courthouse, Benton, Illinois, before Michelle Zimmerman, Notary Public and Certified Shorthand Reporter, CSR No. 084-004339, for the State of Illinois, pursuant to notice.

A P P E A R A N C E S
(By phone)

Christie R. Deaton
Stephen M. Tillery
Korein Tillery
Attorney (s) at Law
1 US Bank Plaza
505 N. Seventh Street
Suite 3600
St. Louis, Missouri, 63101-1625

In behalf of the Plaintiffs;

Ms. Patricia Murphy
Murphy Law Office
P.O. Box 220
Energy, Illinois 62933

In behalf of the Plaintiffs;

Mark C. Surprenant
Adams and Reese
Attorney (s) at Law
One Shell Square
701 Poydras Street
Suite 4500
New Orleans, Louisanna 70139

In behalf of the Defendants;

Christopher MacNeil Murphy
Peter Sheffield
Michael A. Pope
McDermott, Will & Emery
Attorney (s) at Law
227 W. Monroe Street
Chicago, Illinois 60606-5096

In behalf of the Defendants.

1 THE COURT: All right. Now, redo the
2 role call for the plaintiffs, please.

3 MR. TILLERY: Yeah, for the
4 plaintiffs, Your Honor, it's Steve Tillery from
5 Korein, Tillery, I'll be doing most of the
6 talking, I think.

7 THE COURT: All right.

8 MS. MURPHY: Patricia Murphy.

9 THE COURT: All right.

10 MS. MURPHY: Counsel for plaintiff.

11 THE COURT: And for the defendant?

12 MR. POPE: For the defendant, Your
13 Honor?

14 THE COURT: Yes.

15 MR. POPE: Michael Pope, McDermott,
16 Will, along with Christopher Murphy and Peter
17 Sheffield and also I have co-counsel from New
18 Orleans Mark Surprenant on the line as well.

19 THE COURT: Very well. And if you
20 could identify yourself on the record for the
21 record, I guess, when you speak and obviously
22 because we're doing this by phone we can't have
23 anybody talking over anybody else. So it will
24 probably go a lot smoother if you just wait
25 until I recognize you or just your side then one

1 person speak for each side, please. And
2 hopefully -- I have this little mountain of
3 information that was submitted to me, but I'm
4 thinking we might be able to cut through this
5 without a lot of difficulty. If it gets to be
6 -- if we're going to have to start handling a
7 lot of different documents and things like that,
8 then I regret I'm going to have to drag
9 everybody here to Benton, which is something
10 that everybody will want to avoid. So in any
11 event, who --

12 MR. POPE: Your Honor --

13 THE COURT: Steve Tillery --

14 MR. POPE: -- I initiated this
15 request, I'd be happy to go first if it would
16 please the Court.

17 THE COURT: All right. And this is
18 Steve Tillery, correct?

19 MR. POPE: Mike Pope speaking now.

20 THE COURT: Okay. Mike, I'm sorry.
21 Mike Pope speaking up. All right.

22 MR. POPE: Let me just remind the
23 Court of how we got to where we are. The
24 plaintiffs filed a motion with you asking for
25 limited targeted jurisdiction discovery in June.

1 I don't think you necessarily had to give them
2 that, but in June you granted that and in that
3 order you used the word limited twice in
4 discussing the kind of discovery that you were
5 permitting. It was my position that when they
6 sent -- filed their discovery shortly thereafter
7 they greatly overreached with a lot of broad
8 requests. We had -- we had some 62 reports for
9 admission, we had 17 document requests, we had
10 121 interrogatories if you count the subparts,
11 and they asked for nine depositions.

12 THE COURT: Well, let me interrupt you
13 for a second.

14 MR. POPE: If you recall --

15 THE COURT: Let me interrupt a second
16 Mike, excuse me.

17 MR. POPE: Okay.

18 THE COURT: Excuse me, Mike. The
19 discovery requests were not directed to the
20 let's call it the Swiss Syngenta, there's -- I
21 mean, that's what all this is about right now is
22 the attempts to bring Syngenta AG into this.
23 Syngenta Crop Protection is already before the
24 Court, correct?

25 MR. POPE: That's correct, Your Honor.

1 The original discovery was issued to both
2 parties and that was part of a motion that we
3 filed asking you when you had the hearing on
4 July 27th. And as you recall the order you
5 issued on July 27th, the very first sentence
6 says, discovery served by the plaintiffs far
7 exceeds the narrow scope authorized by the
8 order. And instead of those nine depositions
9 you ordered that we produce two people, two
10 Swiss executives in Europe, and that Crop
11 Protection should answer the written discovery
12 at that time. We complied and we're still
13 having the discussions with the plaintiffs on
14 some of this stuff, but we basically went
15 through a whole bunch of work to comply with the
16 written discovery and we have the depositions of
17 the two Swiss executives scheduled for October
18 in Brussels. About two weeks later, however,
19 the plaintiffs then sent out another whole
20 avalanche of documents, stuff of which was sent
21 to you. Again, instead of narrowing their scope
22 they sent real broad discovery requests and they
23 are back to asking for the whole nine
24 depositions again, sometimes with riders
25 attached to those notices of deposition that go

1 15 pages. I believe that the Court made it
2 clear in its order that we are trying to keep
3 this thing limited because let me remind
4 everybody this is a sidetrack, none of this goes
5 to the merits of the case, we're all just kind
6 of -- what's supposed to be limited discovery
7 over jurisdiction and the requests the
8 plaintiffs have filed far exceed I think what
9 the Court intended by its orders. Now, we've
10 had several discussions, Steve and I, trying to
11 work this thing out in some kind of a
12 compromised fashion and we were unable to do
13 that and that's why we had to come back to you
14 again to get clarity on what you meant in the
15 order you issued on July 27th. So I ask the
16 Court to reiterate that the depositions should
17 be the two people in Brussels and if after that
18 there's need for further discovery we come back
19 to you, but that this wholesale additional
20 document request and request for admissions and
21 all these other things should be quashed and
22 let's go forward with the discovery that's
23 already been agreed to and ordered by you on
24 July 27th.

25 THE COURT: Let me ask you this, I'm

1 --

2 MR. POPE: -- in terms of the merits
3 of the case and not spend all our time on
4 jurisdiction --

5 THE COURT: Let me ask you this, Mike,
6 I'm looking at the order that was entered at
7 Document 65 and it says all -- the words
8 limited, et cetera were used with regard to
9 Syngenta AG, then in a separate paragraph it
10 says also plaintiffs may initiate discovery with
11 Syngenta Crop Protection, Inc. to explore the
12 nature and extent of any agency relationship
13 between the defendants. The discovery may focus
14 on acts by Syngenta AG to manage, control,
15 direct, or supervise the business operations of
16 Syngenta Crop Protection, Inc. Now, the nine
17 depositions, are these -- are these -- Steve
18 Tillery, are these Crop Protection people?

19 MR. TILLERY: Yes, sir, every one of
20 them.

21 THE COURT: And the written discovery
22 --

23 MR. TILLERY: We have one person, who
24 was I think Mr. Meili, who had been noticed who
25 was a decelerant in support of their motion for

1 -- to dismiss based upon lack of jurisdiction,
2 other than that the other eight people that are
3 noticed in Greensboro, North Carolina are all
4 Crop Protection employees, and I think there's
5 six of them, judge --

6 THE COURT: Mike --

7 THE WITNESS: -- not eight or nine.

8 THE COURT: And, Mike, I'm sure you've
9 read the copy of the letter that was submitted
10 by plaintiffs regarding this discovery dispute
11 where several parts of the transcript of that
12 July 27 conference we had were referenced and
13 while my actual recollection of what happened on
14 that day -- I mean, I generally recall exactly
15 what was going on, but not specifically, but
16 it does appear that we were anticipating more
17 vigorous discovery concerning Crop Protection.

18 MR. POPE: Well, Your Honor, I do have
19 your -- I did -- I did read the transcript, I
20 did read Stephen's letter, I also read your
21 order of July 27th and in there you said two
22 things, the depositions of Atkin and Maeder in
23 Europe and then you said plaintiff may also
24 target documents in the possession of Syngenta
25 Crop Protection in an effort to show pervasive

1 control of Syngenta AG.

2 THE COURT: And it says, also
3 plaintiffs my initiate discovery with Syngenta
4 Crop Protection, Inc. to explore the nature and
5 extent of any agency relationship between the
6 defendants. I don't see too much limiting
7 there, it says initiate discovery.

8 MR. POPE: You're talking about the
9 June order, Your Honor.

10 THE COURT: Is that the June order?
11 I'm looking at Document 65. All right. You're
12 right, it is the June order. I'm sorry. I'm
13 sorry.

14 MR. POPE: Document 77 --

15 THE COURT: Okay.

16 MR. POPE: -- July 27th.

17 THE COURT: That was the minute entry.

18 MR. POPE: That was the order you
19 issued following our last hearing.

20 THE COURT: All right. Hang on.
21 Well, the minute order probably has to be read
22 in conjunction with the other things that are
23 going on here and I don't think it was my
24 intention to really put a halt to the discovery
25 with Crop Protection. I mean, the case is going

1 to go on whether Syngenta AG is -- Steve, am I
2 right or wrong on this, even if -- let's just
3 say that circumstances do not permit Syngenta AG
4 to eventually become a defendant in this
5 lawsuit, is it your intention to proceed against
6 Crop Protection?

7 MR. TILLERY: Yes, it is, Your Honor.

8 THE COURT: Well, then that was my
9 thought as well. And I see what you're talking
10 about there, Mike, but I don't really intend to
11 limit the discovery with Crop Protection. You
12 guys just need --

13 MR. POPE: Your Honor, I don't have
14 any problem if they're talking about going
15 forward with the merits with Crop Protection
16 witnesses. I don't have --

17 THE COURT: Yeah, go ahead and let it
18 rip on that one.

19 MR. POPE: I thought this was related
20 to the jurisdiction issue.

21 THE COURT: Well, and it will be, but
22 with regard to the -- I mean, I don't really
23 want to restrict the discovery concerning Crop
24 Protection with regard to the Syngenta AG
25 jurisdictional issue and -- so if there was a

1 misunderstanding I -- that resulted from our
2 last meeting, then hopefully this will clear it
3 up, that I think with regard to Crop Protection,
4 which is properly before the Court, then any
5 discovery at all, including that regarding the
6 Syngenta AG's relationship is fair game.

7 MR. POPE: So, Your Honor, these
8 depositions will be one time, though, they won't
9 be able to come back a second time and take the
10 same witnesses again, will they?

11 THE COURT: Well, I don't know they're
12 -- I don't know. Rule 26 doesn't say or -- and
13 32 doesn't say you just get one shot, I mean, we
14 have people redeposed for lots of reasons all
15 the time. You know, we will just keep our
16 options open on that, but obviously if it gets
17 to be harassing or oppressive -- but, you know,
18 harassing and oppressive is what you guys do in
19 discovery, isn't it?

20 MR. POPE: I just want to make sure I
21 know what the scope of the depositions will be
22 if they're going to go forward. That's all,
23 Judge, I was just --

24 THE COURT: No, I mean, I -- you know,
25 usually when it gets out of hand it's pretty

1 obvious. And we've got a couple of things going
2 on in this case, you know, we've got the
3 jurisdictional battle, and that's going to focus
4 on things that don't have much to do with the
5 primary allegations in the complaint. So while
6 it is my intention to be as efficient as
7 possible in this and not to subject any
8 witnesses to undue burdens, it is -- sometimes
9 it happens and so we'll be as efficient as we
10 can. But I understand we do have two separate
11 plots going on here. As far as Mr. Meili's
12 deposition, as far Mr. Meili was not one of the
13 ones -- where does he live?

14 MR. POPE: Switzerland, Your Honor.

15 THE COURT: Yeah, we're probably going
16 to have to -- did Meili submit an affidavit then
17 in support of the jurisdictional motion?

18 MR. TILLERY: Yes, he did.

19 MR. POPE: Yes, he did.

20 THE COURT: Yeah, we will have to
21 expand the -- expand the deposition list to
22 include him as well then, either that or we will
23 strike his affidavit. I'll leave that up to --

24 MR. POPE: We will make him available,
25 Your Honor.

1 THE COURT: And, yeah --

2 MR. POPE: We'll work out a convenient
3 place with Steve on that one.

4 THE COURT: Yeah, and let's get that
5 done --

6 MR. POPE: His will be five hours as
7 well, I assume?

8 THE COURT: That's correct. You might
9 as well get that done when guys are in Belgium.
10 When are you guys going?

11 MR. POPE: Well, if we can't do
12 that -- we may bring him over here for the
13 accommodation of the Court and for his lawyers.
14 We'll work it out with Steve.

15 THE COURT: He probably comes over
16 here to the United States. But let's not wait
17 on that because obviously the Court's going to
18 want to get him deposed within 60 days.

19 MR. POPE: Yes, sir.

20 THE COURT: And because we can't
21 really do too much on the jurisdictional issue
22 without his deposition and that's -- what is the
23 spelling on Meili's for the court reporter?

24 MR. POPE: M-E-I-L-I.

25 THE COURT: M-E-I-L-I. And his first

1 name?

2 MR. POPE: Copias. C-O-P-I-A-S.

3 THE COURT: Okay. And does that take
4 care of our primary issues today?

5 MR. POPE: The only other thing,
6 Judge, is that I would ask you to give me 30
7 days to respond to that written discovery that
8 is sitting there on your desk.

9 THE COURT: I will give you 30 days to
10 do that and let me ask you to do something too,
11 because I read through these things and what is
12 the purpose of making the usual boilerplate
13 objections and then saying subject to the
14 foregoing the answer is blah, blah, blah?
15 There's really nothing achieved by doing that.
16 You're not preserving an objection and we really
17 don't need to know about it.

18 MR. POPE: We were just trying to --
19 some situations where the question -- the
20 wording of the question was confusing and we
21 were just trying to highlight that and going
22 ahead and answering it as best we could with the
23 understanding of what we had of what the terms
24 meant.

25 THE COURT: Well, and probably the

1 better way to do that --

2 MR. POPE: -- boilerplate objections,
3 we were trying to avoid those.

4 THE COURT: Yeah, boilerplate
5 objections --

6 MR. POPE: -- plaintiffs lawyers to
7 conduct a discussion on that and clarify that so
8 there's no further confusion.

9 THE COURT: Boilerplate objections are
10 never a good idea. And we can start with the
11 proposition that all discovery is burdensome,
12 rarely unduly burdensome.

13 MR. POPE: I thought that's why they
14 served it, Judge.

15 THE COURT: That's -- that's what you
16 guys -- that's what you guys do and, you know,
17 big firms like McDermott, Will, and Emery,
18 unduly burdensome discovery is what pays you
19 guys' bills so -- yeah, that's the -- having
20 these discovery wars is what keeps big firms
21 alive so --

22 MR. POPE: I don't normally practice
23 that way, Judge, so we will take another look at
24 that and see if we can avoid that in the future.

25 THE COURT: All right. Very good. So

1 30 days -- today's the 20 -- oh, I'm sorry, the
2 16th so 30 days from today will be the 16th of
3 October.

4 MR. TILLERY: The problem, Your Honor,
5 if we go down there we're going to have to
6 reschedule the deps then because -- in Europe
7 because that would put his clients after our
8 deposition.

9 THE COURT: Oh, I'm sorry. Well --

10 MR. POPE: Your Honor, just a second
11 here. I don't know that every single one of
12 these things needs to be done before we go to
13 these depositions. There's been -- is there --
14 we will have done a bunch of compliance before
15 then and I don't think we should -- it took a
16 long time for me to schedule these depositions
17 with these executives, I would hope we don't --

18 THE COURT: Steve, can you target some
19 of these that will be the ones you really want
20 before the depositions?

21 MR. TILLERY: Yes. For example, Your
22 Honor, if I could just take a second, I don't
23 want to interrupt with Mike's discussion so if I
24 can proceed now?

25 THE COURT: Go right ahead.

1 MR. TILLERY: All right. A couple of
2 things. For example, in the last hearing that
3 we had you discussed e-mails and you said that
4 communications back and forth with Crop
5 Protection and AG are going to be fair game in
6 terms of getting those from Crop Protection and
7 not AG.

8 THE COURT: Right.

9 MR. TILLERY: You limited it to Crop
10 Protection.

11 THE COURT: Right.

12 MR. TILLERY: And we vouched for that
13 and the answer has been basically, look at the
14 documents that were provided in the Illinois
15 case that -- of course, where AG is not even
16 sued and where jurisdictional issues have not
17 even been raised by any of the entities and we
18 need those and here they just objected both
19 times to producing them. In addition to that
20 the documents that have been referenced here, to
21 give you an example, and I don't want to -- I
22 know you don't want to probably go through these
23 by line and verse, but there's a couple of
24 items. There are in their interrogatory answers
25 on 12 through 16, they reference page numbers of

1 specific pages, for example, 12 I think has 31
2 pages referenced; 13 has 140 pages; and in some
3 of the others 31; 21. Well, here's what
4 happened, the very last document that we
5 attached as an exhibit to our letter and to you
6 is a letter from Mr. Reeg. In that letter he
7 identified that he gave these documents and put
8 them in and bundled them with a compliance of
9 over 40,000 pages of Holiday Shores documents.
10 Unfortunately, they didn't tell us where they
11 were so, in other words, you have to go through
12 all 45 or 46,000 pages of Holiday Shores
13 documents to find these two or 300 pages. No
14 reference point. And this is the -- I know --
15 you know, I'm not -- I'm not -- and I'm sorry,
16 and I misspoke, it was -- Ms. Deaton corrected
17 me, she said it's 40,000 documents, 300,000
18 pages of documents were given to us. So in
19 other words, to find these 300 or 400 you have
20 to open 300,000 pages of Holiday Shores
21 documents individually to find the ones that
22 he's referenced in these interrogatories. Now,
23 truthfully I don't want to get verbose here, but
24 that's just not playing fair. And the fact is
25 is that we need -- we need real documents, real

1 discovery, and real e-mails in order to put this
2 on and to make a good case for you on this
3 jurisdiction and that's all we're trying to do.
4 So I think we need documents, and I'm willing to
5 do anything with Mike that he wants in terms
6 that it's reasonable. If he wants to take these
7 deps at that time, fine, we'll do them, but I
8 need the -- I need the stuff to look at before I
9 depose them. If we're going to -- if he needs
10 more time to take them, then we need the
11 documents first and then let him produce the
12 people a little later. But this should be based
13 on fundamental fairness and what's been
14 happening has not been fair.

15 THE COURT: Mike, what can you do here
16 to help?

17 MR. POPE: In terms of fundamental
18 fairness, I only got Steve's objection 48 hours
19 ago so we're still in the process of giving him
20 a response. Many of these things I think are
21 very much answerable and if, in fact, the focus
22 of our discovery is the day-to-day control that
23 AG had over Crop Protection in the area of
24 Atrazine being sold or manufactured and sold in
25 Illinois we have some limited ways to go about

1 gathering stuff. It's only when you say give us
2 every single e-mail between two companies that
3 takes over a six year period, that becomes what
4 is so difficult to do. What we have done, just
5 so you know, Your Honor, in connection with the
6 state court case, which has been going on for
7 several years now, we have engaged in a rolling
8 document production in that case. The issues
9 are almost identical except that AG is not
10 involved in that case true enough. But
11 nonetheless we have been producing virtually
12 millions of pages of documents on a rolling
13 basis so we're trying not to start from scratch
14 on this discovery with requests that are broad
15 and having to do with Atrazine itself. So I'm
16 working with Steve right now, I didn't -- I say
17 I don't think we should be talking about his
18 letter of September 13th, that was just two days
19 ago, we're still working on trying to help with
20 the responses. Maybe we can withdraw some
21 objections and clarify some of the language that
22 was a little loose and unclear in his discovery
23 request so that we can get this thing to him.
24 As to the new stuff they filed two weeks ago --
25 and I don't know how much of that really relates

1 to the deposition of Mr. Atkin and Mr. Maeder,
2 but I'm just hoping to find a way to work this
3 out so those depositions don't get continued
4 because that's a logistic effort to try to get
5 -- to fly to Switzerland and to Brussels.

6 MR. TILLERY: If I may respond just
7 for a second, Judge, just so you know the
8 documents that he referenced and he said two
9 weeks ago were actually overdue. The responses
10 were due on those last Friday, there was never
11 any objection about any discovery, but that
12 stuff is actually stale with no response at all.
13 But the bottom line is that really truthfully
14 we're willing to do this any way that the Court
15 wishes except that we don't think that when we
16 go take depositions without anything to look at
17 in advance and then get the document a week or
18 two after the depositions are taken that that's
19 fair. And, I mean, we should be able to read
20 their files, look at the e-mails, see the
21 documents before the depositions take place to
22 do this fairly. And if -- I think that it's up
23 to Mike if we wants to -- if we wants to keep
24 the depositions scheduled, then give us the
25 documents now. If he wants to give the

1 documents to us in 30 days, then switch the
2 depositions. But one way or the other we should
3 have those before the depositions.

4 MR. POPE: Well, just to respond to
5 Steve there, Judge, we have in connection with
6 the original set of document requests we have
7 some 80,000 documents we're prepared to release
8 to the plaintiffs as soon as this protective
9 order we are discussing gets entered. We are
10 almost there, we were just a few words apart.
11 There are some trade secrets and some other
12 confidential information that our competitors
13 would be happy to have and so we're just working
14 on that language. Once that's done, we should
15 have these in his hands by tomorrow. I was just
16 referring to the new series of discovery that
17 they filed -- or they served on us a couple
18 weeks ago. I need to go through that a little
19 more detailed to see if we can get enough stuff
20 so that he can feel comfortable taking the
21 deposition. It's not my intention to sandbag
22 anybody in this case, to produce documents right
23 after the deposition, that's not it at all.
24 It's more a matter of the efficiency and the
25 logistics of trying to arrange these depositions

1 in times when all the lawyers and the witnesses
2 and everybody else can be present for the
3 deposition in Brussels.

4 THE COURT: Yeah, you know, when I --
5 when I hear that millions of documents or even
6 hundreds of thousands of documents are produced
7 in response to a discovery request, I start to
8 suspect one of two things or maybe even a little
9 of both are in play, I mean, it's just -- it's
10 astounding to me that there could possibly be
11 that many documents that would matter. And so
12 what I think then is that we've either got
13 discovery requests that are a little loose in
14 requesting -- you know, casting too broad a net
15 or we've got what I've seen in several
16 situations before where defendants just dump
17 trailer loads of documents on people in hopes
18 that it will just be confounding and -- you
19 know, I mean, there's -- it seems to be very
20 unlikely that millions of documents would be
21 properly responsive to properly made discovery
22 requests. And --

23 MR. POPE: Let me be clear, Judge,
24 maybe I misspoke or maybe I was misunderstood.
25 What I was referring to in terms of millions of

1 documents is the state court case in that it was
2 seeking documents regarding all the scientific
3 studies regarding Atrazine, all the
4 communications with EPA, the state agency,
5 things like that. That's a much bigger package
6 that we're talking about. I have the limited
7 amount -- it's still extensive, but limited
8 amount of documents that's responsive to Steve's
9 first series of requests to us and we will get
10 those things as soon as we have this protective
11 order issue resolved. And it's not millions at
12 all, it's 75 or 80,000 documents. It's the kind
13 of thing he just talked about in his hands, I've
14 got them, just need to have the protection
15 order, which we have been discussing now for a
16 couple of weeks, have that entered in the next
17 day or two and we will have those things in his
18 hands.

19 THE COURT: Why don't we just wait and
20 see what is produced with that, Steve, and if
21 there's still a problem you call me and we will
22 set up another --

23 MR. TILLERY: All right.

24 THE COURT: -- all right.

25 MR. TILLERY: I will, Judge, I will do

1 that and we will just wait and see.

2 THE COURT: Yeah.

3 MR. TILLERY: But one step in the
4 process is the protective order and here's what
5 I would propose to the Court. If this seems
6 reasonable we are -- Mr. Murphy and I are at
7 loggerheads over a definition and I don't know
8 that -- this wasn't scheduled for hearing and I
9 don't mean to advance it. Chris Murphy is on
10 the phone call and I don't want to advance it if
11 they don't want to argue it, but here's my
12 proposal so that we can get this going. If we
13 don't resolve this dispute about a particular
14 definition of what is or isn't confidential
15 within the next day, then I suppose we can ship
16 you a proposed of protective orders. They are
17 all -- they are virtually identical with the
18 exception of I think one paragraph and a page or
19 two pages as to why we think ours should be done
20 and then you can enter your order. And rather
21 than us continue -- this process has been going
22 on for weeks and I think we should just send it
23 to you and let you make the call, and give you a
24 letter, a two-page letter saying why we think
25 ours is the right answer.

1 MR. POPE: That will be fine with us,
2 Your Honor. We'll try within the next 24 hours
3 to see if we can reach an agreement, if we can't
4 then Friday we will send off a no more than
5 two-page letter with our proposal as well, is
6 that fair enough?

7 MR. TILLERY: I think that's fine.

8 THE COURT: And I'll have something
9 for you pretty quickly. I mean, you know,
10 there's a lot of days guys where I've come to
11 the conclusion that the -- one of the primary
12 things that our system is in place to do is to
13 provide employment for people in the legal
14 profession and not much else. This is one of --
15 this is an example that would -- you know, these
16 things get over lawyered dramatically and so,
17 you know, let's just kind of use our heads on
18 it. And I understand you guys have to try to
19 agree on a lot of different things and then we
20 start getting -- we get tired egos involved in
21 these things that are just tired of -- tired of
22 compromising and this and that, but my guess is
23 is -- you know, this may be something vital and
24 crucial to the continued viability of the
25 company or whatever, but I kind of doubt it.

1 So, you know, use your heads, let's work
2 something out and get moving on it, otherwise,
3 I'll make a quick decision.

4 MR. TILLERY: All right. Judge one
5 other -- one final thing before -- rather than
6 -- I sent you some materials today for the
7 hearing as well and rather than going through
8 this, which would take considerable time because
9 we dispute a lot of things which you saw in our
10 letter, I think probably we should take the next
11 day or two or maybe even early next week to try
12 to work out these differences before we burden
13 the Court with our problems.

14 THE COURT: Yeah, because, guys, I'm
15 going to tell you, I'm going to blast through
16 this stuff and when I start doing it you're
17 probably neither one are going to like the
18 results.

19 MR. TILLERY: All right.

20 THE COURT: And my strong preference
21 with regard to discovery is -- to borrow, you
22 know, a little phrase from our friends at Nike,
23 just do it. And these things are rarely as
24 important as everybody makes them out to be and
25 we spend more time arguing about it than it

1 would take just to do it. So I'm telling you if
2 -- sometimes the devil you know is better than
3 the devil you don't know and the devil you don't
4 know in this case is what I'm going to order on
5 these things so just give it your best shot.

6 MR. TILLERY: Thank you, Judge.

7 MR. POPE: Your Honor, one final
8 issue. In one of your preliminary orders you
9 strongly encouraged the parties to cross notice
10 the deposition if we're taking them in the same
11 case of the same witnesses as in the federal
12 case, I take it that's still your view as to the
13 efficiency of proceeding on depositions of, for
14 example, Syngenta Crop Protection people if they
15 are being deposed in both cases that should be a
16 process situation, shouldn't it?

17 MR. TILLERY: I'd like to be heard on
18 it, Judge, before you --

19 THE COURT: Well, I'm not going to
20 restrict. I mean, you know, yeah, my
21 encouragement to everybody in every case whether
22 it's this case or, you know, a slip and fall at
23 Kroger is be efficient. And that doesn't mean
24 that, you know, I don't have the authority to
25 suspend Rule 32 or any of the -- or 26 or any of

1 the other federal rules of civil procedure
2 regarding discovery. And, you know, I suppose
3 if somebody wants to be inefficient, then that's
4 what's going to happen, but my encouragement
5 will be to do that certainly.

6 MR. POPE: Okay. We will talk it over
7 with Steve then.

8 THE COURT: I mean, if you can you can
9 and if you can't I understand that, you know,
10 there may be some follow up or tune up. And it
11 wouldn't be the first time that people would be
12 wanting to, you know, prepare for somebody's
13 deposition by taking their deposition, you know.

14 MR. TILLERY: One other reasons -- and
15 I won't argue it now, we will try to work it out
16 -- but one of the reasons for this, of course,
17 is the fact that there is no jurisdictional
18 argument at all, even pending in the state
19 cases, none of that's ever even been raised.

20 THE COURT: Right. So there would
21 probably be some objections to it as beyond any
22 permissible scope and what have you.

23 MR. TILLERY: Exactly. Exactly.
24 Exactly. And that's the purpose, I don't want
25 to muddy one up when you're focussed on

1 something, to muddy it up. And that's part of
2 the reason. Strategically it makes no sense at
3 all to cross notice some of these and then some
4 others -- I mean, the plaintiffs aren't
5 interested in incurring more time and expense if
6 we don't need to and some others where we have
7 some adequate time to cover everything then it
8 would make sense to do it. But we wouldn't want
9 to be bound to do it every time.

10 THE COURT: No. And, you know, down
11 the -- well, I -- and that's why I say, just --
12 it's just kind of a general encouragement, just
13 be efficient where you can. And, you know, a
14 lot of these class actions in particular
15 because, well, the way that they almost all
16 lined up, I mean, a lot of times in these cases
17 people are doing discovery about discovery and,
18 you know, the discovery itself becomes the
19 entire -- becomes the show and so, you know,
20 let's just be efficient and --

21 MR. TILLERY: All right, Judge.

22 THE COURT: And anything else?

23 MR. POPE: No, Your Honor.

24 THE COURT: All right guys, good luck.

25 MR. TILLERY: Thank you.

1 STATE OF ILLINOIS.)
2 COUNTY OF PERRY) SS.
3)

4 I, Michelle Zimmerman, a Notary Public
5 in and for the County of Perry, State of
6 Illinois, do hereby certify:

7 That the said proceeding was taken
8 before me as a Notary Public at the said time
9 and place and was taken down in shorthand
writing by me;

10 That I am a Certified Shorthand
11 Reporter of the State of Illinois, that the said
12 proceeding was thereafter under my direction
transcribed into computer-assisted
transcription, and that the foregoing transcript
constitutes a full, true, and correct report of
the proceedings which then and there took place;

13 IN WITNESS WHEREOF, I have hereunto
14 subscribed my hand and affixed my official seal
15 this 16th day of September, 2010.

16

17

18

19

20

21

22

23

24

25

14 /s/MICHELLE ZIMMERMAN
15 Michelle Zimmerman, CSR#084-004339
16 Notary Public in and for the County
17 of Perry, State of Illinois